



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ARLINGTON COUNTY BOARD FOR ARLINGTON COUNTY WPCP VPDES Permit No. VA0025143**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Arlington County, regarding the Arlington County Water Pollution Control Plant ("WPCP"), for the purpose of resolving certain violations of the State Water Control Law and the applicable Regulation and Permit.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Arlington" means Arlington County Board, a political subdivision of the Commonwealth of Virginia. Arlington is a "person" within the meaning of Va. Code § 62.1-44.3.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "DMR" means Discharge Monitoring Report.

6. "Facility" or "Plant" means the Arlington County WPCP located at 3402 South Glebe Road in Arlington, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Arlington County.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "O&M" means operations and maintenance.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Permit" means VPDES Permit No. VA0025143, which was issued under the State Water Control Law and the Regulation to Arlington County Board on September 23, 2008 and which expires on September 22, 2013.
11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
13. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
14. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "VPDES" means Virginia Pollutant Discharge Elimination System.
20. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Arlington owns and operates the Plant in Arlington, Virginia, which is currently undergoing a large-scale, \$568 million upgrade and expansion in accordance with the terms of a Consent Order issued to Arlington on March 23, 2005, including additional hydraulic capacity, equalization tankage, and state-of-the-art nutrient removal. The Permit allows Arlington to discharge treated sewage and other municipal wastes from the Plant, to Four Mile Run, in strict compliance with the terms and conditions of the Permit.
2. Four Mile Run is located in the Lower Potomac River Basin. Tidal Four Mile Run is listed in DEQ's 303(d) report as impaired for *E. coli* and PCB's in fish tissue.
3. On January 20, 2009, DEQ received notification from Arlington of an unauthorized discharge of approximately 15.5 million gallons of partially treated sewage from the Plant into Four Mile Run. The discharge occurred for 15 hours and 55 minutes starting on January 17, 2009 from 1:00 p.m. through 4:50 p.m. and again on January 18, 2009 from 3:40 p.m. lasting through 3:45 a.m. on January 19, 2009. Arlington provided the notification to DEQ more than 24 hours after the discharge was discovered. Arlington asserts this unauthorized discharge was the result of a power outage at the Plant and an inlet valve to an EQ tank being frozen closed. DEQ notes that per Part I.F.7 of the Permit, the Plant is a Reliability Class I facility. 9 VAC 25-790-490.B states that to meet Class I reliability, two separate and independent sources of power feed, each capable of maintaining continuous treatment works operation at peak design flow during power failures is required.
4. Part II.H of the Permit requires that "[i]f any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the Department after the discovery of the discharge."
5. On June 8, 2009, DEQ received notification from Arlington of an unauthorized discharge that had begun from the Plant. Arlington later notified that the discharge occurred for 28 hours and 6 minutes starting on June 8, 2009 at 12:06 a.m. and lasting through 4:12 a.m.

on June 9, 2009 and resulted in approximately 23.75 million gallons of partially treated sewage being discharged into Four Mile Run. Arlington asserts that rainfall in the days preceding the discharge and construction work contributed to the unauthorized discharge. DEQ notes that rainfall records indicate that approximately 2.3 inches of rain fell over the 8 day period prior to the discharge.

6. On June 15, 2009, DEQ received notification from Arlington of an unauthorized discharge that had begun from the Plant. Arlington later notified that the discharge occurred for 21 hours and 25 minutes starting June 15, 2009 at 11:47 am through 9:12 am on June 16, 2009 and resulted in approximately 17.81 million gallons of partially treated sewage being discharged into Four Mile Run. Arlington asserts that the unauthorized discharge resulted after the ASE1 lift station lost power.
7. Arlington failed to report *E. coli* sampling results for the January 2009 monitoring period, exceeded Ammonia as N permit limits during the April 2009 and June 2009 monitoring periods, and failed to meet minimum pH permit limits during the February 2009 monitoring period in violation of Part I.A.1 of the Permit.
8. NRO issued Notices of Violations for the unauthorized discharges, Ammonia as N and pH exceedances, and *E. coli* reporting error, as follows: NOV No. W2009-03-N-0009, issued March 25, 2009; NOV No. W2009-06-N-0008, issued June 12, 2009; NOV No. W2009-08-N-0008, issued August 31, 2009.
9. On November 30, 2009, Arlington reported an unauthorized discharge of approximately 12,800 gallons of sewage from the Windy Run Lift Station into Windy Run. Arlington asserts that the unauthorized discharge stemmed from the combination of a partial loss of power at the lift station and emergency generator firmware safety features preventing the generator from coming online.
10. NRO issued NOV No. 2010-01-N-0010 on January 19, 2010 for the November 30, 2009 unauthorized discharge.
11. During January 2010, Arlington exceeded cBOD monthly concentration and mass load limits. In addition, in January 2010, Arlington reported an annual average Total Nitrogen concentration for 2009 of 8.7 mg/l in excess of the 8.0 mg/l limit. In addition, on January 18, 2010, Arlington reported an unauthorized discharge of approximately 100,000 gallons of sewage and groundwater from a manhole into Doctor's Branch.
12. NRO issued NOV No. 2010-03-N-0001 on March 15, 2010 for the cBOD and Total Nitrogen exceedance and the January 18, 2010 unauthorized discharge.
13. During March 2010, Arlington exceeded the Total Suspended Solids concentration limit, the Total Phosphorus monthly average concentration and mass loading limits; failed to maintain the required Total Residual Chlorine concentration; failed to operate and maintain the sludge pumps in accordance with the O&M manual; and failed to monitor a bypass for BOD.

14. NRO issued NOV No. 2010-05-N-0001 to Arlington on May 11, 2010 for the March 2010 violations.
15. During April 2010, Arlington failed to maintain the required minimum pH level on one day; and failed to monitor for one of the 12 Total Residual Chlorine samples required each day.
16. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
17. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
18. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
19. The Department has issued no permits or certificates to Arlington for WPCP discharges other than VPDES Permit No. VA0025143.
20. Four Mile Run, Windy Run, and Doctor’s Branch are surface waters located wholly within the Commonwealth and “state water” under State Water Control Law.
21. Based on the foregoing events, the Board concludes that Arlington has violated the Permit and Va. Code § 62.1-44.15 and 9 VAC 25-31-50, by discharging partially treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(15), above.
22. Arlington has submitted documentation that verifies that a number of the violations as described below have been corrected as follows:
  - a. E. Coli (C7) – Replaced the bacterial testing system to eliminate false positives associated with the original system;
  - b. pH (C7) – Took appropriate disciplinary action;
  - c. Unauthorized Discharge (C9) – Corrected issue with firmware;
  - d. pH (C16) – Installed caustic metering system upstream of post-aeration facility;
  - e. TRC (C16) – Took appropriate disciplinary action;
  - f. BOD Sampling (C13) - Took appropriate disciplinary action.
23. Arlington asserts that the other violations described above are either temporary construction-related events or are otherwise being addressed through facility improvements consistent with the March 2005 Consent Order. Construction is ongoing and expected to be completed ahead of schedule.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Arlington and Arlington agrees to:

1. Pay a civil charge of \$87,590.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Arlington shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order, with the consent of Arlington for good cause shown by Arlington, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Arlington admits the jurisdictional allegations, but neither admits nor denies the findings of fact, and conclusions of law contained herein.
4. Arlington consents to venue in the Circuit Court of the County of Arlington for any civil action taken to enforce the terms of this Order.
5. Arlington declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as

a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Arlington to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Arlington shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Arlington shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Arlington shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Arlington intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

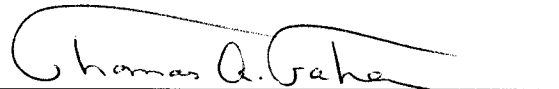
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Arlington. Nevertheless, Arlington agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. Arlington petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Arlington.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Arlington from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Arlington and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Arlington certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Arlington to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Arlington.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Arlington voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27<sup>th</sup> day of September, 2010.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

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Arlington County Board voluntarily agrees to the issuance of this Order.

Date: 7/26/10 By: Marsha Algerier, Acting County Manager  
(Person) (Title)

Commonwealth of Virginia

City/County of Arlington

The foregoing document was signed and acknowledged before me this 26 day of July, 2010, by Marsha Algerier on behalf of Michael Brown who is County Manager of Arlington County on behalf of the Arlington County Board.



[Signature]  
Notary Public

7079206  
Registration No.

My commission expires: April 30 2014

Notary seal: